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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

RON HACKER et. al.,

Cross-complainants and Appellants,

v.

GABRIEL RUBANENKO,

Cross-defendant;

MATTHEW H. TAMBOR,

Objector and Respondent.

B149507

(Super. Ct. No. BC157831)

APPEAL from an order of the Superior Court of Los Angeles County, Rodney E. Nelson, Judge. Appeal dismissed.

Law Offices of Vincent J. Quigg and Vincent J. Quigg for Cross-complainants and Appellants.

Matthew H. Tambor, in pro. per., for Objector and Respondent.

No appearance for Cross-defendant.

Cross-complainants Century West Financial Corporation, Magnumm Corporation, Interworld Events, Inc., Ron Hacker and David Cohen (collectively, cross-complainants) appeal from a February 9, 2001 order they maintain set aside certain sanctions and costs once imposed on Matthew H. Tambor, an attorney who had represented cross-defendant Gabriel Rubanenko. Because cross-complainants have not provided an adequate record for us to determine whether the February 9 order is an appealable order or, if it is, whether the trial court abused its discretion in its ruling on February 9, we dismiss the appeal.

PROCEDURAL BACKGROUND

The following procedural account is based on the limited clerk's transcript designated for the appeal.

On October 3, 1997 the trial court set aside default judgments entered against cross-defendant Rubanenko in the cross-actions filed by cross-complainants. In doing so, the trial court imposed sanctions on Tambor--Rubanenko's former attorney -- in the amount of \$1,500 per cross-complainant. Tambor appealed.

On February 6, 1998 the trial court imposed an additional \$1,500 in sanctions on Tambor in favor of cross-complainant Cohen in connection with the setting aside of a default judgment in a related case. Then, while cross-complainants apparently attempted to collect from Tambor the sanctions awarded in their favor, Tambor was ordered to pay additional sums: (1) on February 16, 1999 the trial court entered an order reflecting an additional \$3,798 in sanctions, plus discovery referee fees, against Tambor in favor of cross-complainant Interworld; and (2) on April 12, 2000 the trial court imposed \$1,473 in costs and interest on Tambor in favor of cross-complainant Hacker and \$1,596 in costs and interest on Tambor in favor of cross-complainant Magnumm.

On October 30, 2000 this court issued an opinion in Tambor's appeal from the initial sanctions order in connection with the granting of Rubanenko's motions for relief from default. We affirmed the imposition of sanctions but modified the amounts awarded

from \$1,500 to \$1,000 per cross-complainant. (See Code Civ. Proc., § 473, subd. (c)¹ [allowing trial court to impose a \$1,000 penalty on an offending attorney when granting relief from a default judgment].)

On or about January 5, 2001 Tambor moved in the trial court for an order “comporting all orders of [the trial] court to the opinions and orders of the Court of Appeal.” Tambor argued that his payment to cross-complainants Interworld, Hacker and Cohen of \$1,000 would constitute full satisfaction of the sanctions imposed on him.² According to Tambor: (1) he had paid cross-complainant Century West \$1,500 and, as a result, was owed \$500 based on this court’s modification of the sanctions to \$1,000; (2) he did not owe anything to cross-complainant Magnumm because it was “not a registered or qualified corporation [in California] and by law ha[d] no standing to get sanctions or collect them”; and (3) the trial court, pursuant to its authority under section 908, should strike the additional sanctions and costs imposed on him during the collections process because he had offered to pay cross-complainants \$1,000 each based on the specific language in section 473, subdivision (c), and, therefore, cross-complainants were not reasonable in their efforts to collect \$1,500 each.

Cross-complainants opposed Tambor’s motion, arguing that Magnumm was entitled to collect the sanctions awarded in its favor and that Tambor should be required to pay the additional sanctions and costs imposed on him even though the amount of the initial sanctions had been modified on appeal.

On February 9, 2001 the trial court entered a minute order stating, “Hearing re order confirming all previous Court orders is held as fully reflected in the notes of the

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

² Tambor stated the \$1,000 sanction in favor of Interworld should be paid to Eli Appel based on a judgment and lien Appel had against Interworld.

Official Court Reporter and are incorporated by reference herein.”³ This appeal by cross-complainants followed.

DISCUSSION

1. The Record on Appeal Is Inadequate for This Court to Determine Whether Cross-complainants Have Appealed from an Appealable Order.

Cross-complainants appealed from “the Order of the Superior Court granting . . . Tambor’s motion for an order Comporting all Orders of the Court Regarding Sanctions, entered on February 9, 2001.” A party who appeals from an order must include a statement in the opening brief explaining why that order is appealable. (Cal. Rules of Court, rule 14(a)(2)(B).) Cross-complainants failed to do so.

Cross-complainants also failed to provide this court with an adequate record from which we could determine on our own whether the order is appealable. The only document in the record referring to a ruling on February 9, 2001 is the clerk’s minute order. There is no judgment or formal order in the record. And nothing in the record explains the posture of the case at the time the February 9, 2001 minute order was entered. Thus, it is not clear whether the February 9 order might be an appealable postjudgment order (§ 904.1, subd. (a)(2)), or whether the order is a nonappealable order because no judgment has yet to, or will ever, be entered, in which case the order would have been reviewable only by a petition for writ of mandate. (Compare *Shelton v. Rancho Mortgage & Investment Corp.* (2002) 94 Cal.App.4th 1337, 1344-1345 & fn. 2 [postjudgment order denying sanctions is appealable] with *Wells Properties v. Popkin* (1992) 9 Cal.App.4th 1053, 1055 [where no judgment would be entered because parties

³ The minute order also reflects that the trial court denied two other pending motions filed by cross-complainants Magnumm, Hacker and Cohen: (1) a motion for an order to show cause why Tambor should not be held in contempt of court and for an additional \$1,808 in sanctions against Tambor; and (2) a motion for an order to show cause why Saul Bubis should not be held in contempt of court and a request for monetary sanctions against Bubis in the amount of \$1,308.

settled the underlying case, order denying sanctions is not appealable and reviewable only by writ petition].)⁴

We have no jurisdiction to entertain an appeal from a nonappealable order. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696; see also Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2001) ¶ 2:5, 2-2 [“Appellate courts *cannot* entertain an appeal taken from a *nonappealable* judgment or order. This is a *jurisdictional* principle”].) Because cross-complainants here provide no basis for us to determine whether the order appealed from is appealable, we dismiss the appeal. (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 631, p. 661 [“reviewing court has inherent power, . . . on its own motion, to dismiss an appeal that it cannot or should not hear and determine”].)⁵

⁴ Cross-complainants make no argument that we should treat their purported appeal as a petition for writ of mandate, and we decline to do so. (See *Wells Properties v. Popkin*, *supra*, 9 Cal.App.4th at p. 1055 [appeal from nonappealable order should be treated as a writ petition only in the most extraordinary circumstances, “““compelling enough to indicate the propriety of a petition for writ . . . in the first instance”””].)

⁵ Tambor moved to dismiss the appeal, and requested sanctions, on the ground that cross-complainants had appealed from a nonappealable order. Tambor maintains that cross-complainants are appealing from a judgment refusing to hold a party in contempt and/or an order denying a motion for sanctions against an attorney and that neither is appealable. Tambor, however, has not provided an adequate record for us to determine whether his motion has merit. He has not even demonstrated that cross-complainants have appealed from either a judgment refusing contempt or an order denying sanctions. We have only the notice of appeal, which states that the appeal is from an order “granting . . . [a] motion for an order Comporting all Orders of the Court Regarding Sanctions” And cross-complainants maintain they are not appealing from either a judgment refusing contempt or an order denying sanctions. Tambor also contends the appeal should be dismissed under the doctrines of law of the case, estoppel and res judicata. But he provides no explanation as to how those doctrines might apply here and does not suggest this court’s prior opinion decided any issue with respect to the additional sanctions and costs he was ordered to pay while cross-complainants attempted to collect on the sanctions imposed under section 473, subdivision (c). Thus, we deny Tambor’s motion to dismiss and his request for sanctions.

2. The Record on Appeal Also Is Inadequate for This Court to Determine How the Trial Court Ruled on February 9, 2001, Much Less Whether the Trial Court Abused Its Discretion.

A fundamental rule of appellate review is that an appealed judgment or order is presumed to be correct. “All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; see also *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) To overcome this presumption, the appellant must provide an adequate appellate record demonstrating error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.) “[I]f the particular form of record appears to show *any* need for *speculation or inference* in determining whether error occurred, the record is *inadequate*.” (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra*, ¶ 4:43, p. 4-9.)

Here, the record designated by cross-complainants is *so* inadequate that we cannot determine how the trial court ruled or the basis for its ruling, let alone whether the trial court abused its discretion. The clerk’s February 9, 2001 minute order merely states that the trial court held a hearing on Tambor’s motion. It does not specify whether the trial court granted the motion in full or in part or denied the motion, nor does it explain the basis for the trial court’s ruling. There is no formal order or notice of ruling in the clerk’s transcript. Moreover, although the minute order indicates a court reporter was present at the hearing and states the trial court’s ruling is embodied in the reporter’s transcript of the proceedings, cross-complainants declined to designate the reporter’s transcript for inclusion in the record on appeal.⁶ Thus, we have no basis on which to conduct a meaningful review of the trial court’s February 9, 2001 ruling.

⁶ If, by some remote chance, an official reporter’s transcript of the proceedings could not have been transcribed, cross-complainants could have proceeded by way of an agreed statement or a settled statement. (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra*, ¶ 4:230, p. 4-49 [“When the proceedings *cannot be transcribed*, the superior court will mail notice specifying the portions of the oral

Generally, when an appellant fails to provide an adequate record, we follow the presumption that an appealed judgment or order is presumed to be correct and, on that basis, affirm the appealed judgment or order. (*Estrada v. Ramirez* (1999) 71 Cal.App.4th 618, 620, fn. 1 [burden of appellant to provide accurate record on appeal to demonstrate error; failure to do so “precludes an adequate review and results in affirmance of the trial court’s determination”].) In this case, however, we cannot even determine from the record how the trial court ruled. Accordingly, we dismiss the appeal.

DISPOSITION

The appeal is dismissed. The parties shall bear their own costs.

PERLUSS, J.

We concur:

JOHNSON, Acting P. J.

WOODS, J.

proceedings that cannot be transcribed and showing the date of mailing. The designating party has 10 days thereafter to serve and file an agreed statement or motion to use a settled statement for those portions”]; see Cal. Rules of Court, rules 4(g), 7(a)(2)(B).)